

STATE OF SOUTH DAKOTA
DEPARTMENT OF HEALTH

BOARD OF MEDICAL AND OSTEOPATHIC EXAMINERS

IN THE MATTER OF:)	FINDINGS OF FACT,
DECLARATORY RULING)	CONCLUSIONS OF LAW, AND
REGARDING DELEGATING THE)	DECLARATORY RULING
TASK OF WRITING DIETARY)	
ORDERS)	

This matter came before the South Dakota Board of Medical and Osteopathic Examiners (“Board”) through a petition filed by Board Staff, pursuant to SDCL 1-26-15 and ARSD § 20:78:02. The Petition was filed on February 10, 2017, and requested that the Board enter a declaratory ruling as to the issue noted below. On June 8, 2017, after due and proper notice, a hearing was held regarding the petition at which the Board heard oral testimony regarding the petition. Now, being otherwise informed as to all matters pertinent thereto, the Board enters the following Declaratory Ruling.

ISSUE

May an attending physician for a resident of a long-term care facility delegate the task of writing dietary orders to qualified dietitians or other clinically qualified nutrition professionals, and is this delegation allowed within the scope of practice of nutrition or dietetics as defined by state law?

FINDINGS OF FACT

1. The United States Department of Health and Human Services (“HHS”) issued a final rule for Reform of Requirements for Long-Term Care Facilities. 81

Fed. Reg. 68688 (October 4, 2016). This final rule included language relating to the delegation of authority to dietitians and other nutrition professionals to write dietary orders for patients in long-term care facilities. The final rule relating to dietitians and other nutrition professionals can be found at 42 CFR § 483.30 and 42 CFR § 483.60.

2. 42 CFR §483 contains the requirements that an institution must meet to qualify to participate as a skilled nursing facility in the Medicare program, and as a nursing facility in the Medicaid program.

3. The stated intent of the HHS rules is “to reflect the substantial advances that have been made over the past several years in the theory and practice of service delivery and safety. These revisions are also an integral part of [HHS’s] efforts to achieve broad-based improvements both in the quality of health care furnished through federal programs, and in patient safety while at the same time reducing procedural burdens on providers.” *Reform of Requirements for Long-Term Care Facilities*, 81 Fed. Reg. 68688 (October 4, 2016).

4. People living in long-term care settings generally have complex chronic and acute medical conditions that require an interdisciplinary team to manage.

5. Physicians and dietitians work as a team to provide services to residents of long-term care facilities.

6. The attending physician for a resident in a long-term care facility has overall supervisory responsibility for the patient’s treatment, and should be aware of all treatments ordered for long-term care patients to prevent counterproductive

orders that are not aligned with patients' care goals and needs. The promulgation and carrying out of dietary orders can have a significant impact on the patient's quality of life.

7. The current prevailing practice in South Dakota is for the attending physician to write and sign dietary orders, or the attending physician will instruct the dietitian (or other qualified nutrition professional) to draft dietary orders for the attending physician to review and sign.

8. The long-term care facility may adopt rules and procedures for the medical team, and attending physicians may issue standing orders or protocols regarding an individual patient's care. A protocol is a standardized plan for medical procedures or administration of medications or dietary plans, with an outline of specific procedures and medications, by which certain tasks are delegated to South Dakota licensed healthcare professionals whose scope of practice allows the performance of such tasks.

9. Any finding of fact more appropriately labeled a conclusion of law is hereby re-designated as such and incorporated therein below.

CONCLUSIONS OF LAW

1. The Board has the authority under SDCL ch. 36-4, 1-26-15, and ARSD § 20:78:02 to issue declaratory rulings concerning the applicability and interpretation of the Board's statutory and regulatory provisions and the practice of medicine and osteopathy in South Dakota.

2. No person may practice medicine or osteopathy without a license issued under SDCL ch. 36-4. SDCL 36-4-11. A physician may not delegate their ability to practice medicine or osteopathy to an individual not licensed to practice medicine or osteopathy in South Dakota.

3. Both “dietitians” and “nutritionists” are persons who engage in nutrition or dietetics practice pursuant to SDCL ch. 36-10B. SDCL 36-10B-1(5)&(7).

4. The scope of practice of a nutrition or dietetics practice is defined in SDCL 36-10B-5 which states:

A practice in nutrition or dietetics involves the integration and application of scientific principles of food, nutrition, biochemistry, physiology, management, and behavioral and social science to achieve and maintain the health of people. The primary function of a nutrition and dietetic practice is the provision of the following nutrition care services:

- (1) Assessing the nutritional needs of individuals and groups;
- (2) Establishing priorities, goals, and objectives that meet nutritional needs;
- (3) Providing nutrition counseling in health and disease;
- (4) Developing, implementing, and managing nutrition care systems; and
- (5) Evaluating, making changes in, and maintaining appropriate standards of quality in nutrition care.

5. SDCL ch. 36-10B does not require those who practice nutrition or dietetics to be under the direction of or supervised by a physician.

6. The change in federal regulations allows an attending physician of a patient in a long-term care facility to delegate to a dietitian or other qualified

nutrition professional the task of writing dietary orders consistent with 42 CFR § 483.60. 42 CFR § 483.30.

7. Pursuant to 42 CFR § 483.60(e), therapeutic diets must be prescribed by the attending physician, who may in turn delegate to a dietitian the task of prescribing a resident's diet to the extent allowed by state law.

8. Considering the scope of practice of dietitians, physicians may use protocols to delegate to a dietitian or other qualified and licensed nutrition professional the task of prescribing a therapeutic diet for patients in long-term care facilities.

9. The South Dakota Board of Medical and Osteopathic Examiners does not have jurisdiction over reimbursement for medical services under federal law, and makes no findings nor enters any conclusions on those matters.

10. Any conclusion of law more appropriately designated a finding of fact is hereby re-designated as such and incorporated therein above.

Dates this 8th day of March, 2018.

SOUTH DAKOTA BOARD OF MEDICAL AND
OSTEPATHIC EXAMINERS

By: Walter O. Carlson, MD
President